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MONTANA SECOND JUDICIAL DISTRICT COURT,  
BUTTE-SILVER BOW COUNTY

PAUL ERFTENBECK,

Plaintiff,

vs.

WILDER RESORTS, INC., d.b.a.  
FAIRMONT HOT SPRINGS RESORT, and  
JOHN DOES 1-10, inclusive,

Defendants.

Cause No. DV-19-140

District Judge: KURT KRUEGER  
Judge, Dept. 1

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiff, Paul Erftenbeck, by and through his counsel of record, hereby states,  
alleges and avers as follow:

**JURISDICTION AND VENUE**

1. At all times relevant herein, Plaintiff was a resident of Middletown,  
Butler and Warren Counties, Ohio.

2. Defendant, Wilder Resorts, Inc., doing business as Fairmont Hot  
Springs Resort ("Fairmont"), is a Montana business corporation located at 1500  
Fairmont Road, Butte, Montana, and is authorized to do business, and doing business,

1 in the State of Montana at all times relevant herein.

2 3. Fairmont's primary business is that of a hotel, resort and spa.

3 4. The true names and capacities of Defendants named herein as John  
4 Does 1-4, inclusive, are unknown to Mr. Erftenbeck, who therefore brings these claims  
5 against these Defendants by fictitious names. Mr. Erftenbeck may seek to amend this  
6 Complaint to state the true names and capacities of John Does 1-4 when the same have  
7 been determined, together for further appropriate charging allegations.  
8

9 5. Mr. Erftenbeck is informed and believes and therefore alleges that each  
10 of the fictitiously named Defendants may be responsible in some manner for the  
11 occurrences and harms alleged herein and that his damages as alleged herein may  
12 have been proximately caused by the Defendants' acts or omissions, whether  
13 independently or while acting in concert with the Defendants.  
14

15 6. Defendants John Does 1-4, inclusive, are natural persons, supervisors,  
16 agents, contractors, or other legal entities who may have caused or contributed to Mr.  
17 Erftenbeck's injuries as alleged herein, while acting in the course and scope of their  
18 employment and/or agency with the Defendants, or acting independently. As such,  
19 each lawful act or omission and each violation is imputable to Yellowstone County.  
20

21 7. The accident at issue occurred in Butte, Silver Bow County, Montana.

22 8. Venue in this Court is proper.

23 9. Jurisdiction over these Defendants is proper.

24 **GENERAL ALLEGATIONS**

25 10. On January 29, 2019, Mr. Erftenbeck was a guest at Fairmont and had

1 been staying in Fairmont's hotel.

2 11. Upon information and belief, Fairmont has three separate swimming  
3 pools, consisting of large, rectangular-shaped heated pools inside and outside, and a  
4 smaller, hexagon-shaped hot tub attached to the north side of the outdoor pool.

5 12. Upon information and belief, signage advises guests to walk only on the  
6 heated walking path around the perimeter of the outdoor warm pool and hot tub. The  
7 walking path is sectioned off by wooden, in-ground posts that are connected by plastic  
8 chains.  
9

10 13. On the morning of January 29, at approximately 9:25 a.m., Mr.  
11 Erftenbeck exited the building housing the indoor pool and followed the designated  
12 walking path along western-most side of the outdoor warm pool to access the hot tub  
13 on the north side of the outdoor pool.  
14

15 14. Upon information and belief, it had snowed the night before, and the  
16 designated walking path was not clear of snow, ice, or other debris, rendering it  
17 slippery and unsafe.

18 15. As he was nearing the western corner of the hot tub and adhering and  
19 following Fairmont's partitioned walking path, he stepped on a patch of concrete that  
20 appeared wet, but was actually frozen. In doing so, his feet came out from under him  
21 and he landed hard on his lower right leg and right shoulder. He was forced to stay on  
22 the ground in his swimming trunks and sweatshirt until medical personnel arrived.  
23

24 16. As a result of the fall, Mr. Erftenbeck was subsequently transported via  
25 ambulance to St. James' Hospital in Butte, Montana, where it was determined he had

1 sustained a closed displaced spiral tibia-fibula fracture, necessitating open reduction  
2 and internal fixation ("ORIF") surgery the following day. Mr. Erftenbeck was later  
3 diagnosed with an incomplete right rotator cuff tear.

4 17. As a result of Mr. Erftenbeck's fall on Fairmont's premises, he has  
5 suffered, and will continue to suffer, severe pain and disability, mental anguish, loss  
6 of enjoyment of life, loss of consortium, medical expenses, and lost wages.  
7

8 **COUNT I – NEGLIGENCE**

9 18. Mr. Erftenbeck restates and re-alleges all previous allegations as fully set  
10 forth herein.

11 19. Fairmont had a duty of care to monitor, maintain, and keep the  
12 designated walking area surrounding its pools reasonably safe.

13 20. Fairmont breached its duty of care when it failed to monitor and  
14 maintain the roped-off, heated walking path in an unreasonably safe condition,  
15 allowing ice to accumulate in an unsafe manner that was not open or obvious to Mr.  
16 Erftenbeck, thus causing him serious physical, emotional, and financial injury.  
17

18 21. The injuries and damages Mr. Erftenbeck sustained were caused by  
19 Fairmont's failure to use reasonable care in monitoring, maintaining, and keeping the  
20 designated walking area surrounding its pools reasonably safe.

21 22. By virtue of Fairmont's acts of negligence, it is legally responsible to Mr.  
22 Erftenbeck for all resulting damages.  
23

24 **COUNT II – NEGLIGENCE PER SE**

25 23. Mr. Erftenbeck restates and re-alleges the previous allegations as though

1 fully set forth herein.

2 24. Fairmont is negligent *per se* for failing to operate its pool in a sanitary  
3 and safe manner in violation of Mont. Code Ann. § 50-53-106(1).

4 25. Fairmont's violation of the above-named and additional unnamed  
5 statutes constitutes negligence *per se*.

6 26. As a direct and proximate result Fairmont's negligence *per se*, Mr.  
7 Erftenbeck sustained serious and severe injuries and damages as set forth in this  
8 Complaint.  
9

10 **JURY TRIAL DEMAND**

11 Mr. Erftenbeck demands a trial by jury on all issues so triable.

12 **PRAYER FOR RELIEF**

13 Mr. Erftebeck prays for judgment in his favor granting the following relief:

- 14 1. For reasonable compensation for past and future medical and related  
15 expenses;  
16  
17 2. For reasonable compensation for Mr. Erftenbeck's lost earnings and  
18 loss of future earning capacity;  
19  
20 3. For reasonable compensation for Mr. Erftenbeck's physical and mental  
21 pain and suffering;  
22  
23 4. For Mr. Erftenbeck's costs of suit and attorneys' fees incurred herein;  
24 and  
25 5. For other and future relief as the Court deems just and proper.

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1 DATED this 24<sup>th</sup> day of May, 2019.

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